IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 15837 of 2005(I)

PETITIONER:

M.J.MATHAI, (RETIRED ON 31.3.1993 AS TEACHER OF GOVT. LPS, KUMARANKARY, ALAPPUZHA DISTRICT), MYLETTUTHANNIMOOTTIL HOUSE, KULATHOOR P.O. (VIA) VAIPUR, MALLAPPALLY TALUK, DISTRICT PATHANAMTHITTA.

BY ADV. SRI.K.GOPALAN

RESPONDENTS:

1. ASSISTANT EDUCATIONAL OFFICER, VELIYANAD, RAMANKARY P.O., ALAPPUZHA DISTRICT.
2. DEPUTY DIRECTOR (EDUCATION), ALAPPUZHA.
3. THE HEAD MASTER, GOVT. L.P.SCHOOL, KUMARANKARY, ALAPPUZHA DISTRICT.
4. THE ACCOUNTANT GENERAL (A&E), KERALA, TRIVANDRUM.
5. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SHRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 15837/05.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE ORDER OF R1 DTD.14.7.92.

P2. COPY OF THE REPRESENTATION DTD.29.3.93 BEFORE R1.

P3. COPY OF THE -DO- DTD.25.1.96.

P4. COPY OF THE -DO- DTD.25.1.96 TO R2.

P5. COPY OF THE MEMO DTD.20.2.96 FROM R1.

P6. COPY OF THE LETTER DTD.3.11.00 FROM THE AEO, TO CHIEF MINISTER'S GRIEVANCE CELL.

P7. COPY OF THE LETTER DTD.17.12.94 FROM THE GRIEVANCE CELL.

P8. COPY OF THE LETTER DTD.29.1.05 FROM GOVT. OF KERALA.

P9. COPY OF THE GOVT. ORDER DTD.6.10.90.

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///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.15837 of 2005

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Dated this the 22nd day of October, 2007

J U D G M E N T

The petitioner retired from service as a primary school teacher on 31.3.1993. For the period from 3.6.1992 to 14.2.1993 he was holding the charge of the headmaster of the school. The grievance of the petitioner in this writ petition is that he was not paid charge allowance for the said period and the charge allowance so payable was not taken into account for the purpose of fixation of his retirement benefits. The claim was finally rejected by Ext.P8. The petitioner, therefore, seeks the following reliefs:

> "i) issue a writ of Mandamus or other appropriate writ, order or direction commanding the respondents to sanction and pay charge allowance to the petitioner for the period 3.6.1992 to 14.2.1993 during which he carried out the duties of the Headmaster as admitted in Exhibits P6 & P8 pursuant to Ext.P1 order of the 1st respondent, Assistant Educational Officer, Valiyanad;
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> ii) issue a writ of Mandamus or other appropriate writ, order or direction commanding respondents 2 and 4 to pay pension to the petitioner reckoning with retrospective effect the charge allowance due to him for the period 3-6-92 to 14-2-93 by

issuing revised pension payment order;

iii) issue a writ of certiorari or other appropriate writ, order or direction quashing Ext.P8 letter No.66911/H2/04 dated 29.1.2005 of the General Education (H) department;"

2. The contention of the petitioner is that the two reasons mentioned in Ext.P8 for denying the petitioner the relief are not sustainable. According to him, Rule 53(3) of Part I of KSR, which is quoted for denying him charge allowance itself shows that he is entitled for the same. Regarding the limitation stated in Ext.P8 also, in the counter affidavit it is stated that the said Government Order relied upon for the purpose is not applicable to the petitioner's case. Since both reasons mentioned in Ext.P8 having been proved unsustainable, the petitioner is entitled for the relief, is the contention raised.

3. The learned Government Pleader points out that in Ext.P2 dated 29.3.1993, which is the claim raised by the petitioner in this regard, by endorsement dated Nil-4-1993, the same was returned for resubmission in proper form quoting the authority for holding the charge. He points out that thereafter the petitioner approached the authorities only by Ext.P3 dated 28.1.1996, almost three years hence. Further, by Ext.P5 dated

20.2.1996 also the same was rejected. Thereafter, the petitioner filed another representation before the Chief Minister, which led to Ext.P8.

4. The learned Government Pleader points out that there is nothing to show that the petitioner had resubmitted the application after curing the defects and there is inordinate delay in raising the claim again after returning the application in 1993 itself.

5. Having heard both sides, I am inclined to uphold the objection raised by the learned Government Pleader. As is clear from Ext.P2, the application submitted by the petitioner has been returned quoting two defects. There is nothing on record to show that the petitioner had resubmitted the application within a reasonable time after curing the defects. The next representation produced by the petitioner in this regard is Ext.P3 dated 28.1.1996, almost three years after the application was returned to the petitioner. In fact in Ext.P6 order dated 3.11.2006 it is specifically mentioned that the incumbent has raised a claim after a period of 7 years and the office files relating to the same was not traceable at present. I am not inclined to entertain the claim

of the petitioner at this point of time, almost 14 years after the retirement of the petitioner, when the petitioner is guilty of laches in prosecuting his claim, that too, without any evidence to show that the petitioner had actually resubmitted the papers after curing the defects when the same was returned in April, 1993. In the above circumstances, this writ petition is dismissed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.